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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,924	04/08/2004	Edmund W. Brown	328.019	8752
<div>23598      7590      08/06/2007</div> <div>BOYLE FREDRICKSON S.C.</div> <div>840 North Plankinton Avenue</div> <div>MILWAUKEE, WI 53203</div>				
EXAMINER				
KEENAN, JAMES W				
ART UNIT		PAPER NUMBER		
3652				
NOTIFICATION DATE		DELIVERY MODE		
08/06/2007		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

<b>Office Action Summary</b>	Application No. 10/820,924	Applicant(s) BROWN, EDMUND W.	
	Examiner James Keenan	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,7-12 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7-12 and 15-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/18/07 has been entered.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 3, 4, 7-12, and 16-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Independent claims 1 and 10 as now amended recite that the bracing element is connected at one end to the support frame. First of all, this would not even work, because the other end is connected to the load support arm, which is in turn connected to the handle. Therefore, the handle could not slide relative to the frame. Furthermore, this recitation contradicts that which is set forth in the disclosure as originally filed as well as claim 25, which states that the bracing element extends between the horizontal leg of the handle assembly and the load support arm.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 3, 4, 7-12, 15-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 1 of each independent claims 1, 10, and 20, "from" should apparently be --for--.

In claim 7 and 15, line 1, "supporting" should be --support--.

In claims 9 and 18, line 2, "between" should apparently be deleted.

In claim 10, last line, it is not understood what is meant by "the unobstructed rotation of the bed about the axis"; the bed has not been set forth as even being capable of rotation, much less about any particular axis.

In claim 20, line 5, "between" should apparently be deleted;

and line 10, "the aperture have a center being ..." is unclear.

In claim 25, line 2, "arm" should apparently be --member--.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Orozco (US 6,860,493) in view of Thompson, as previously cited.

Orozco shows a cart, which is considered to be a “tugger” cart, absent any structural limitations of the term, inasmuch as it is manually pulled by a handle 16, 46, 126 in the various embodiments, including, in the fig. 2 embodiment, a bed 42 supported on a wheeled frame 44, and in the fig. 11-13 embodiment, a load support member 120 extending from the handle toward the bed, including a load support arm 140 for receiving a load 145 thereon, and a bracing element 144 having a first end connected to the bed 122 and a second end connected to the load support arm, wherein the second end of the bracing element and the bed define an opening therebetween.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Orozco by combining the embodiment of fig. 2 with that of figs. 11-13 such that the bed was supported on a separate frame and the bracing element connected to the frame rather than the bed, thereby providing an opening sized to allow rotation of the bed, as this would merely be the rearrangement of parts of the invention, which has been held to involve only routine skill in the art, particularly since Orozco suggests that the separate frame of fig. 2 could be utilized in other nesting cart arrangements, of which the figs. 11-13 embodiment is one. Note that a rotatable bed *per se* is not considered a positive limitation; rather, only an opening between the bracing element and the frame sized to allow rotation of the bed.

Orozco as modified does not, however, show a slidable handle.

As noted in the previous Office actions, Thompson shows a similar cart with a slidable handle as set forth in the claim.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Orozco with a slidable handle, as taught by Thompson, to adjust the size of the cart to accommodate different lengths of articles.

8. Claims 1, 10, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Topper Industrial website as previously cited in view of Thompson and Orozco.

As noted in the previous Office actions, Topper shows a tugger cart with a rotatable bed essentially as claimed except the sliding handle and the load support member/bracing element assembly connected to the handle.

As noted above, Thompson shows a sliding handle in a similar apparatus, and Orozco shows a load support member/bracing element assembly meeting the claim limitations.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Topper with a sliding handle, as taught by Thompson, to adjust the size of the cart to accommodate different lengths of articles, and with a load support member/bracing element assembly connected to the handle, as shown by Orozco, to allow a greater variety of articles and load capacity to be carried.

9. Claims 3, 4, 7, 11, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Topper in view of Thompson and Orozco, as applied to claims 1 and 10 above, and further in view of Foss et al, as previously cited.

As noted in the previous Office actions, Topper as modified by Thompson does not show the handle to comprise upper and lower pivotally connected portions, although it is noted that Thompson shows the handle to have upper and lower slidably connected portions, as well as a horizontal leg portion lockable in a plurality of user desired positions. Orozco adds nothing to the handle.

As also noted in the previous Office actions, Foss shows a similar apparatus with a handle comprised of upper and lower pivotally connected portions.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Topper with a handle having pivotally connected upper and lower portions, as suggested by Foss, as this would allow the handle to be folded to a non-use position.

Re claim 7, the use of a retaining plate to hold the load on the end of the load support arm would have been a mere design expediency. This is extremely well known in the art to ensure that the load remains secure on the cart during transportation thereof.

10. Claims 8, 9, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Topper in view of Thompson and Orozco, as applied to claims 1 and 16 above, and further in view of Berard (US 5,622,299).

Topper as modified does not show a retractable pin for locking the bed at a selected position on the frame and a locking plate for receiving the pin, the locking plate including a base and ramp plates.

Berard shows a bed supported for rotation on a frame and having means for locking the bed at a selected position, comprising (see figs. 6, 10, 11, and 16-19) a retractable pin 16 operatively connected to the frame and movable between a retracted position which permits rotation of the bed and an extended position where the pin is received in an aperture 34, 35, 36 of a locking plate 5 connected to the bed, thereby preventing rotation of the bed, wherein the locking plate comprises a horizontal base and a pair of legs 31, 32 interconnecting the base to a lower surface of the bed.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Topper with the bed locking structure of Berard, as this would allow the bed to be securely locked in a plurality of desired rotational positions. Although the legs of Berard are not "ramp plates" which diverge from the base, this is merely an inconsequential design variation which one of ordinary skill would recognize as an obvious alternate equivalent.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Topper in view of Berard.

This rejection utilizes the same obviousness rationale set forth above in paragraph 9, except the intervening references to Thompson and Orozco are not needed.



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12. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Topper in view of Berard, as applied to claim 20 above, and further in view of Thompson.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Topper with a sliding handle, as taught by Thompson, to adjust the size of the cart to accommodate different lengths of articles.

13. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Topper in view of Berard and Thompson, as applied to claim 21 above, and further in view of Foss et al.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Topper with a handle having pivotally connected upper and lower portions, as suggested by Foss, as this would allow the handle to be folded to a non-use position.

14. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Topper in view of Berard and Thompson and Foss et al, as applied to claim 22 above, and further in view of Orozco.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Topper with a load support member/bracing element assembly connected to the handle, as shown by Orozco, to allow a greater variety of articles and load capacity to be carried.

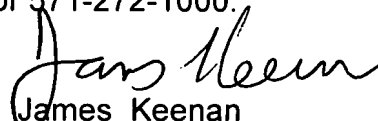
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15. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
7/27/07